

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KIM M. BATTISTA,

Plaintiff,

v.

**5:09-CV-0572
(TJM/GHL)**

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

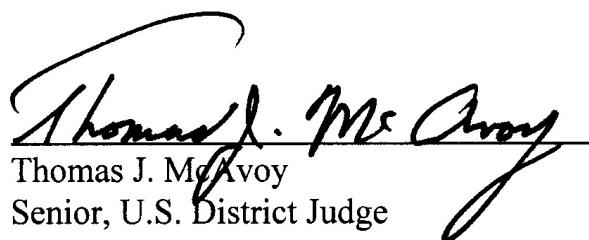
This action brought pursuant to the Social Security Act (“the Act”), 42 U.S.C. §§ 405(g), 1383(c)(3), was referred by this Court to the Hon. George H. Lowe, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule N.D.N.Y. 72.3(c). The Report-Recommendation dated July 26, 2010 recommends that the decision of the Commissioner be VACATED, and that the case be REMANDED to the agency for further consideration. See Rep.- Rec. [dkt. # 21]. No objections to the Report-Recommendation have been lodged and the time for filing objections has expired.

After examining the record, this Court has determined that the Report - Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

Therefore, the Commissioner's decision denying disability benefits is **VACATED** and the case is **REMANDED** for further administrative proceedings consistent with this Decision and Order and with Magistrate Judge Lowe's Report-Recommendation.

IT IS SO ORDERED.

DATED: September 1, 2010



Thomas J. McAvoy
Senior, U.S. District Judge